to inform them what had happened to Gopal so that they could take precautions. But he chose not to inform them, not even to Lim Ah Tee, deceased person in the 3rd estate, to whom the work of digging the well was given.

In *Bamfield* v. *Goole and Sheffield Transport Company, Limited*[1] (citing from *Charlesworth* on Negligence, 4th ed. para 712)

"when the defendants shipped ferro-silicon on board a keel belonging to the plaintiff's husband, and the ferro-silicon gave off poisonous fumes which killed her husband and injured the plaintiff herself, it was held that the defendants were liable to the plaintiff although they were ignorant of the danger arising from ferro-silicon."

In the present case, there was overwhelming evidence to show that the appellant knew the presence of gaseous fumes from the well.

We therefore agree with the learned trial judge that on the evidence adduced the appellant was wholly liable for the deaths of the six persons.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Kam Woon Wah & Co.; Murphy & Dunbar.*

KHO NEE HIN v. SELIMAH BTE. ABDUL GHANI & ORS.

[F.C. (Lee Hun Hoe C.J. (Borneo), Chang Min Tat & Syed Othman F.JJ.) June 24, 25, 1980 & April 7, 1981]
[Kuala Lumpur — Federal Court Civil Appeal No. 99 of 1979]

Torts — Negligence — Dependency Claim — Interest on award.

In this case the claim against the appellant and two others by the respondents was based on negligence arising from a road accident. As a result of the accident, the deceased who was travelling as a passenger in a land rover was killed. The learned trial judge awarded $23,000.00 as pre-trial loss of dependency and $57.204.00 as after-trial loss of dependency. He agreed that the loss of dependency was $450.00 a month but cut down the purchase period for future loss from 20 years (as claimed) to 14½ years. He also awarded 4% interest on the pre-trial loss of dependency. The appellant appealed against the quantum and also against the award of interest at 4% instead of the usual 3%.

Held: in the circumstances of this case, the generosity shown by the learned trial judge was in favour of the appellant and the appeal should be dismissed.

Case referred to:-

(1) *Cookson* v. *Knowles* [1978] 2 All E.R. 604.

FEDERAL COURT CIVIL APPEAL.

G. Sri Ram (*Joseph Chia* with him) for the appellant.

David Tay for the respondent.

Cur. Adv. Vult.

Syed Othman F.J. (delivering the judgment of the Court): This appeal is against the decision of the High Court at Seremban in awarding 4% interest instead of 3% on pre-trial loss of dependency, in awarding $23,000 as pre-trial loss of dependency, and $57,204 as after-trial loss of dependency, and generally in failing to apply the proper tests and proper method in calculating total loss of dependency.

The claim against the appellant (who was first defendant at the trial) and two others by the respondents, the widow and 3 infant children of the deceased person, is based on negligence arising from a road accident. The deceased person had been travelling as a passenger in a land rover driven by the second defendant, agent and servant of the Government of Malaysia, the third defendant, when the land rover collided with a motor car driven by the appellant along the same road proceeding in the same direction, Tampin to Gemas. It also states that the accident was caused by the negligence of the first defendant and by the second defendant or by either of them. It is unnecessary to go through the particulars of negligence as the appeal is merely against the matters set out above.

At the trial it was agreed that either the appellant or the second defendant was or both were liable. Dependency was also agreed upon. In view of the agreement as to liability, the appellant's side adduced no evidence at the trial. On the question of quantum for pre-trial loss (from the date of death to date of trial) the appellant's side agreed that the period should be 66 months, but the rate of interest should be 3% relying on the decision of the House of Lords in *Cookson* v. *Knowles.*[1]

As regards loss after the date of trial, it was submitted that deceased was 29 years old when he died, and considering that he could have been working for another 26 years, 20 years purchase would be reasonable, and after deducting 66 months, i.e. pre-trial period, 14 years purchase would be reasonable. This loss would, therefore, be 14 years × $200 = $23,756, the total therefore would be $38,365.

The respondents' side submitted that from the figures shown on the annual earnings of the deceased between 1973 and 1979, the average monthly income was $448.71; for pre-trial loss, a fair figure for dependency should be $350 per month for 66 months — total $23,100 plus ½ bank rate, 4%; as to future loss of dependency the average income for this should be $450 per month, with 20 years purchase $67,284.

The learned trial judge agreed with the submission of the respondents' side as to the earnings of the deceased but cut down the purchase period for future loss to 14½ years. (The appellant's side asked that this period should be 14 years). No interest was given for future loss.

The trial of the case was in March, 1979. The evidence shows that when deceased died in September, 1973 he was earning $230 per month. According to a letter of 9th March, 1979 from Ibu Pejabat, Rancangan Pembasmi Malaria, Seremban (page 63 of appeal record), the salary of the deceased in March, 1979 would be $445 under the new Cabinet Committee Report; this rise in salary was from January 1, 1976 and normal increments included. (The letter also mentions additional allowances, "Elaun Bantuan Khas" $30 per month from October 1, 1973 to June 30, 1977 and one month's salary as bonus annually from January 1, 1974 to June 30, 1977). According to the calculation

of the respondents' side the salary should have been $448.71 which did not appear to be disputed. Considering all these and the general inflationary situation, we agree with the learned trial judge that $350 per month would be a fair average figure for the pre-trial period.

As regards interest for pre-trial loss, *Cookson's*[1] case did not decide that the interest should invariably be 3%. Lord Diplock in his summary at page 612 said:—

"2. Interest on the pre-trial loss should be awarded for a period between the date of death and the date of trial at half the short term interest rates current during that period."

In the present case, neither side adduced evidence as to what the rates were during any of the relevant years 1973-79. In any case, judging from the rates of such interest during the past few years, we would consider that 4% is a reasonable average figure for half the short term rates during those years. The increase by the trial court of the deceased's earnings from $445 or from $448.71 according to the respondents' side to $450 per month in the calculation of future loss should be considered as marginal. The learned trial judge must have taken into account other fringe benefits which a Government servant normally receives. Further, looking at the case as a whole and, considering particularly that the learned trial judge has cut down the years of purchase for future loss from 20, asked for by the respondents' side, to 14½ years close to the figure asked for by the appellant, we are satisfied that the generosity shown by the learned trial judge in the circumstances of this case is indeed in favour of the appellant. We consider 20 or at least 18 years' purchase would be more reasonable for this case.

We dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Chan & Chia; Murphy & Dunbar.*

LAM WAI HWA & ANOR. v. TOH YEE SUM & ORS.

[F.C. (Raja Azlan Shah C.J., Syed Othman & Salleh Abas F.JJ.) October 1, 1980, February 21 & April 13, 1981]

[Kuala Lumpur — Federal Court Civil Appeal No. 97 of 1979]

Family Law — Chinese Marriage — Chinese man married according to Chinese custom — Subsequently marrying another Chinese woman according to Chinese custom — Whether second marriage valid — Second marriage registered under Registration of Marriages Enactment — False statement to Registrar — Does not affect validity of marriage — Whether claim to share in estate of deceased statute-barred — Whether Chinese polygamous — Whether appellant secondary wife of deceased Chinese man — Limitation Ordinance, 1953, s. 23 — Registration of Marriages Enactment (F.M.S. Cap. 111), s. 8.

Customary Law — Chinese Marriage — Subsequent marriage to another Chinese woman according to Chinese custom — Validity of second marriage.

Practice and Procedure — Limitation — Claim to share in estate of deceased — When time begins to run — Limitation Ordinance, 1953, s. 23.

In this case the deceased a Chinese had married the first appellant according to Chinese custom. On his death the first appellant obtained letters of administration to his estate. The deceased had married the first respondent, while his first marriage was still subsisting. The marriage was conducted according to Buddhist rites and was registered under the Registration of Marriages Enactment. The deceased in his lifetime gave a monthly allowance for the maintenance of the first respondent and her children and after his death in 1960 this was continued until 1975. When the respondent discovered that she and her children were left out as beneficiaries of the deceased's estate, she applied to the court for a declaration that she was entitled to share in the estate. The appellants contended (a) that the first respondent's marriage to the deceased was null and void; and (b) that the claim was caught by the statute of limitation. Suffian L.P. sitting in the High Court held that the marriage was valid and also that the claim was not statute-barred. The appellants appealed.

Held, dismissing the appeal: (1) even although the deceased made a false statement when he registered the marriage with the first respondent, this did not affect the validity of the marriage;

(2) Chinese marriages in Malaysia are polygamous and in this case on the facts the union of the first respondent with the deceased constituted a valid secondary marriage and the first respondent was therefore a secondary wife of the deceased;

(3) the claim was not statute-barred as time began to run from the time the first respondent and her children ceased to be treated as beneficiaries by the appellants.

Cases referred to:-

(1) *In re Lee Gee Chong* [1965] 1 M.L.J. 102.

(2) *The King* v. *Sim Boon Lip* (1901) 7 S.S.L.R. 4.

(3) *Tan Ah Bee* v. *Foo Koon Thye & Anor.* [1947] M.L.J. 169.

FEDERAL COURT CIVIL APPEAL.

G.T. Rajan for the appellants.

Wong Soon Foh for the respondents.

Cur. Adv. Vult.

Salleh Abas F.J. (delivering the judgment of the Court): The appellants are the administratrixes of the estate of one late Tong Poh Hwa (hereinafter called the deceased) who died on December 22, 1960; letters of administration having been granted to them on August 24, 1961 in K.L. High Court Petition No. 196 of 1961. The first appellant is the widow of the deceased. He married her on May 11, 1947 according to Chinese rites. There are seven children, two boys and five girls born out of this marriage.

Five years later on December 17, 1952 whilst the marriage was still subsisting the deceased married the first respondent. The marriage was conducted according to Buddhist rites and was registered on February 21, 1953 under the Registration of Marriages Enactment (F.M.S. Cap. 111). The other four respondents are the children begotten of this marriage. In contemplation of the marriage the deceased and the first respondent signed a marriage agreement on December 3, 1952, whereby the deceased undertook to pay at least $300 monthly allowance for her maintenance and support, and would continue to pay this sum even if he had foresaken or deserted her. The deceased also undertook to execute a marriage settlement to provide her with a share of his property. The deceased died without making such settlement.

After the deceased died the first respondent regularly received the maintenance sum of $300 per month from the estate of the deceased and from 1968 this was paid from the fund of one of the family com-